REMARKS/ARGUMENTS

Applicant appreciates the Examiner's courtesy in granting applicant's representative a telephone interview on January 29 and 30, 2009. Pursuant to M.P.E.P. §713.04, applicant submits herewith an Interview Summary form.

Applicant further appreciates the Examiner's continued thorough search and examination of the present patent application.

Claim Amendments

Claims 1-8 have been canceled to reduce the number of issues. Claim 9 has been amended to define applicant's invention. The amendment to claim 9 is made to clarify that the methods defined by claim 9 and the claims that depend from claim 9 are tied to a machine or apparatus. Applicant submits that the changes to these claims are made to place the claims in better condition for appeal and/or allowance, and do not alter the scope of protection defined thereby. The prior art references cited by the Examiner in the final Office Action each contain computer technology and, therefore, applicant submits that the amendments to the claims do not give rise to a requirement for further search. Entry of these amendments is respectfully requested.

Summary

As noted during the interview and as explained herein, the prior art references cited by the Examiner, either taken alone or in combination, do not teach, suggest or disclose applicant's claimed invention.

Background

During the telephone interview, the Examiner and applicant's representative discussed the background of applicant's claimed invention. It is believed that the novelty and non-obviousness of applicant's claimed invention is better understood in the context of the invention's background.

As is well known, medication costs have increased substantially in recent years, and various efforts to reduce medication costs have been made. One such effort, which is pertinent to applicant's claimed invention and described in the Background section of applicant's detailed description, relates to a shift from independent pharmacies to networks of publicly-held corporate pharmacies (see paragraph [0003]). Publicly-held corporate pharmacies strive to minimize costs while maintaining profits. Some ways that this is achieved include "volume purchases," "discounts for movements of market share," and "negotiated healthcare fees" (see paragraph [0003]). At least part of the cost-containment process includes price discounts and incentives that are negotiated between the publicly-held corporate pharmacies and a pharmaceutical corporation that provides (i.e., is the source of) one or more prescription medication(s). The publicly-held corporate pharmacy network is able to negotiate better terms with the pharmaceutical corporation than a small, independent pharmacy by leveraging a promise of increased market share for the pharmaceutical corporation (see paragraph [0006]). Simply put, the greater the volume of a particular pharmaceutical corporation's medication that is sold in the network of pharmacies, the greater the discount or other incentive that can be offered by the pharmaceutical corporation. Accordingly, the market share of a pharmaceutical company's medication is directly tied to cost containment and profit.

Problems With Determining Market Share

It is very difficult to accurately determine a pharmaceutical company's prescription medication market share for several reasons. One reason is that a single prescription for medication may be fulfilled in several "transactions." A transaction, as used in applicant's detailed description, typically includes information such as patient name, prescribing physician, medication name, prescription quantity, quantity dispensed, pharmacist's name and date of fulfillment (see paragraph [0006]). Thus, one prescription may be fulfilled in several transactions. Moreover, one prescription may be fulfilled in several transactions at several different pharmacies. Further, several transactions for a single prescription may include several different kinds of medications. For example, one transaction for a single prescription of blood pressure medication may be filled with generic medication. A second transaction for the same prescription may be filled at a different pharmacy with a brand-name (i.e., a particular pharmaceutical company's) medication. To complicate things even further, medication that is not used or consumed (e.g., unopened medication) may be returned to a pharmacy. One reason why medication may be returned and not consumed is, for example, the unfortunate fact that patients die. A patient, for example, may fulfill several prescriptions, each in several transactions at different pharmacies, and have a supply of drugs relating to several different prescriptions. Prior to consuming all of the drugs, the patient dies.

Multiplying these scenarios for many patients, for many prescriptions, for many transactions per prescription, and for medications that are returned and not consumed reveals a very complex problem that directly impacts the ability to accurately determine actual consumption of a prescription medication. As noted above, determining a pharmaceutical corporation's market share is important to negotiate discounts and incentives. However, calculating a pharmaceutical corporation's market share for a respective medication accurately is very difficult.

Applicant's claimed solution

Unlike anything in the prior art, applicant's claimed invention accurately determines consumption of medication that is dispensed pursuant to a prescription. Applicant's invention accomplishes this in a novel and nonobvious way. Generally, applicant's claim 9 defines a "logical rule" that is formulated from a plurality of records, and, thereafter, tested against at least one "subsequent" transaction. The rule is formed and tested to calculate consumption of medication. By defining and using applicant's claimed "logical rule," actual consumption data of medication can be calculated (not shown in the prior art), and, further, the "logical rule" precludes a need to have to actually count consumption of each and every medication in a plurality of transactions for a prescription.

Thereafter, as discussed in greater detail below, applicant's claim 9 is not taught, suggested or disclosed in the prior art.

Applicant's Claimed Invention

Claim 9

Turning now to the limitations recited in the claims, applicant's claim 9, as amended, is directed to a method of using a processor to "determine consumption of medication" dispensed pursuant to "a prescription." The medication is dispensed at "one or more pharmacies." Applicant's claim 9 includes "obtaining using a processor" a "plurality of medication dispensation transaction records" and "correlating using the processor the obtained medication dispensation transaction records to the prescription." Applicant's claim 9 further claims "extracting using the processor medication dispensing data" and "medication usage data" from the correlated dispensation transaction records. The "medication usage data" includes "an amount of medication in the prescription that has been returned or not consumed."

Applicant's claim 9 further claims "consolidating" using the processor the "medication dispensing data" and "usage data" related to the "prescription." Claim 9 further recites "identifying at least one pattern" in the dispensing data and the usage data, and "utilizing" the pattern to "formulate at least one logical rule." Thereafter, the logical rule is tested for accuracy on at least "one subsequent transaction record." Further, amended claim 9 defines "using the at least one logical rule" to calculate medication actual consumption data that comprises "at least one of a plurality of sources" and "at least a portion of the actual consumption data that is respectively attributed to at least one of the plurality of sources." In this way, a logical rule is formed that is based on a plurality of records, tested on a subsequent transaction, and is used to calculate consumption of medication that is respectively attributed to a plurality of sources (e.g., pharmaceutical companies) of dispensed medication.

Prior Art Rejections

35 U.S.C. §103(a): Claims 1-4, 7-14 and 16-18

Claims 1-4, 7-14 and 16-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pack-Harris, et al. ("Pack-Harris," U.S. Patent No. 6,195,612) in view of Edelson, et al. ("Edelson," U.S. Patent No. 5,737,539), and further in view of Felthauser, et al. ("Felthauser," U.S. Patent No. 5,781,893). Applicant respectfully traverses this rejection with reference to claims 9-14 and 16-18.

Pack-Harris, in contrast to applicant's claim 9, is directed to a pharmacy benefit management system that regards determining drug-related information based upon prescription activity from a pharmacy. Pack-Harris regards monitoring drug costs and utilization rates by "individual physicians" and by an "entire medical group" (see column 2, lines 25-32). Pack-Harris does not teach, suggest or disclose computing actual consumption data that comprises "portions" of actual consumption of medication that are "respectively attributable" to a "plurality of sources." The pharmacy benefit management system of Pack-Harris cannot be used to calculate actual consumption data, which includes "portions of the actual consumption of … medication that are respectively attributable to the plurality of sources," as recited in applicant's claims.

Pack-Harris is concerned with charging members appropriate costs for medication, due to a capitation requirement of the pharmaceutical corporation. Pack-Harris is not concerned with determining consumption of medication dispensed pursuant to a prescription. Further, there is no teaching, disclosure or suggestion in Pack-Harris of "identifying" and "utilizing … [a] pattern to formulate at least one logical rule for calculating medication actual consumption data," as recited in applicant's claim 9. The Examiner cites to column 5, lines 6-9 of Pack-Harris for allegedly teaching this feature. This passage, however, refers to using the software in Pack-Harris to review prescription patterns to identify problem areas within a medical practice group, to create treatment guidelines, and to set standards for pharmaceutical utilization. There is no teaching or suggestion in this passage, or elsewhere in Pack-Harris, to formulate a "logical rule for calculating medication actual consumption data," as recited in applicant's claim 9.

Moreover, there is no teaching, disclosure or suggestion in Pack-Harris of "testing … the at least one logical rule for accuracy on at least one subsequent transaction." The Examiner cites to column 5, lines 10-12 of Pack-Harris for allegedly teaching this feature. This passage, however, refers to monitoring progress of the medical group over time and providing "report cards" that identify patterns of utilization for individual physicians. There is no teaching or suggestion in this passage, or elsewhere in Pack-Harris, of "testing … the at least one logical rule for accuracy on at least one subsequent transaction," as recited in applicant's claim 9.

Pack-Harris is cited by the Examiner for allegedly teaching all of the features of applicant's claim 9, except for the following: obtaining a plurality of medication dispensation transaction records from one or more pharmacies; medication usage data that includes an amount of medication that has been returned or not consumed; consolidating medication dispensing data and medication usage data related to a prescription; and that a plurality of sources include a plurality of pharmaceutical companies." Accordingly, the Examiner cites to Felthauser and Edelson for teaching those features.

Felthauser is cited for allegedly teaching applicant's claimed features of receiving a plurality of medication dispensation records from one or more pharmacies, as well as for consolidating medical dispensing data and medical usage data dispensed at all of one or more pharmacies. Applicant respectfully submits that Felthauser does not teach, suggest or disclose these features. Instead, Felthauser is directed to a system for estimating product distribution over a geographic area. Felthauser notes that it would be desirable to "determine the number of prescriptions written by a physician so that marketing efforts may be directed at the prescribing physicians" (column 1, lines 31-34). Felthauser is concerned not with determining actual consumption, returns, or even determining dispensation records from one or more pharmacies, however, but rather with physician marketing records. Felthauser estimates sales activity by determining "the distances between first sales outlets from which sales activity data are obtained and other sales outlets" (column 2, lines 51-55). This is distinct from applicant's claimed feature of receiving a plurality of medication dispensation records for one or more pharmacies.

Referring now to particular passages of Felthauser cited by the Examiner, column 12, lines 33-39, regards prescription data from pharmacies and stored in data store 210 according to the prescribing physicians. Continuing at line 40, not cited by the Examiner, Felthauser states that "the total sales for the prescribing physician J of a particular prescription product is estimated in steps 805-870" (emphasis added). In other words and for example, the passage regards one physician (e.g., Dr. Jones) who prescribes medication, such as Benadryl, to his patients. Continuing with this example, Benadryl is sold at pharmacies 01, 02, 03, etc. At the end, all of the sales of Benadryl prescribed by Dr. Jones are estimated. However, there is no teaching, suggestion or disclosure in Felthauser that one prescription from Dr. Jones for Benadryl is filled at many pharmacies in many transactions. Thus, applicant's claimed step of "consolidating dispensing data and medication usage data" related to a same prescription is not taught, suggested or disclosed in Felthauser.

Edelson is cited by the Examiner for allegedly teaching other features of applicant's claims (including a feature in canceled claim 1 that is recited in claim 9) that are missing from Pack-Harris. In particular, Edelson is cited for allegedly teaching applicant's claimed features including medication usage data (including an amount of medication in a prescription that has been returned or not consumed), as well as for teaching where a plurality of sources include a plurality of pharmaceutical companies. Applicant submits, however, that Edelson does not provide these features of applicant's claims. Edelson is directed to an electronic prescription creation system that is essentially a tool that is used by a prescriber of medication at a point of patient care that is usable by a pharmacist to dispense drugs. Edelson incorporates use of a "drug formulary" and guidelines therefor to preclude medication from being prescribed to a patient that would result in a harmful combination with other medication (column 5, lines 28-39). This is accomplished with a comprehensive database of approved drugs classified by conditions (column 5, lines 40-44).

The Examiner states in the Office Action that Edelson teaches "wherein the medication usage data includes an amount of medication and their prescription that has been returned or not consumed," and cites to column 21, lines 49-60 and to column 22, lines 55-65 for support. A review of those passages and a review of Edelson as a whole, does not support the Examiner's conclusion. Nowhere in Edelson, including the cited passages, is any teaching, suggestion or disclosure of medication usage data that includes any amount of medication in a prescription that is returned or not consumed. With regard to column 21, lines 49-60, this particular passage is directed to a strategy to reduce the overall cost of prescriptions (estimated to be from 20-40%). The passage further says "[s]avings will accrue initially to the drug benefit management companies who reimburse the direct costs of most prescriptions[.]" Respectfully, this passage has nothing to do with medication usage data that includes an amount of medication in a prescription that has been returned or not consumed. The reimbursement referred to in the passage regards savings that are realized from the reduction of the overall cost of prescriptions. Edelson's invention aims to reduce prescription costs by preventing costs associated with treating patients following a harmful interaction of two medications. Other cost savings include the reduction of time required for a prescribing medication and the amount of information that is quickly and easily made available to prescribers of medication associated with a patient's condition or medication for treatment. No part of the cited passage (or Edelson, generally), however, teaches, discloses or suggests dispensing data in medication usage data from correlated medication dispensation records that includes an amount of medication in a prescription that has been returned or not consumed.

Further, the Examiner cites to column 2, lines 36-38 of Pack-Harris for allegedly teaching "extracting ... medication usage data ... wherein the medication usage data includes an amount of medication and their prescription that has been returned or not consumed." This passage, however, regards only prescription data ("prescription activity") to determine drugs "obtained" and "costs." There is no teaching or suggestion here or elsewhere in Pack-Harris of applicant's claim 9 feature of "extracting ... medication usage data ... wherein the medication usage data includes an amount of medication and their prescription that has been returned or not consumed."

Referring now to column 22, lines 55-65 of Edelson, also cited by the Examiner for support, this passage is directed to medication that is withdrawn from the market, such as in connection with Federal Drug Association (FDA) rules. This passage regards a drug that is withdrawn from the market, and that the fact that the drug has been withdrawn can be communicated to users. Edelson's invention prevents withdrawn drugs from being prescribed or, alternatively, a warning can be posted directly to the prescription. Moreover, users of a withdrawn medication can be identified from history records, thereby referencing not only the drugs that are prescribed, but the expiration dates. In this way, both the patient and the prescribing doctor can be immediately notified, such as via e-mail. There is no indication, however, in this passage of extracting medication usage data that includes an amount of medication in a prescription that has been returned or not consumed.

In connection with the passages of Edelson cited by the Examiner that allegedly teach applicant's claimed feature of a plurality of sources that include a plurality of pharmaceutical companies, applicant submits that the Examiner has not addressed the key features regarding medication and dispensing data, and that medication usage data relate to a single prescription in a plurality of transactions. One passage cited by the Examiner, column 23, lines 6-8, identifies that pharmaceutical and managed care companies can gain marketing benefits from use of Edelson's system to introduce new drugs or new uses of old drugs. Respectfully, this does not teach, disclose or suggest a plurality of pharmaceutical companies that provide medications in connection with a plurality of transactions for a single prescription. This is at least in part because Edelson does not address determining consumption of medication dispensed pursuant to a prescription in connection with a plurality of transactions and a plurality of pharmaceutical sources.

In applicant's view, the Examiner has combined prior art references that, while related to managing costs, do not teach, disclose or suggest all of the features of applicant's claim 9. Therefore, even if one were to combine the references, as the Examiner has done, applicant's claim 9 would not be taught, and one skilled in the art, by combining the prior art references in the way the Examiner has done, could not arrive at the invention of applicant's claim 9.

35 U.S.C. §103(a): Claims 5-6, 15 and 19-20

Claims 5-6, 15 and 19-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pack-Harris in view of Lilly ("Lilly," U.S. Patent Application Publication No. 2003/0093295). Applicant respectfully traverses this rejection with regard to claims 15 and 19-20.

The missing features defined in claim 9 and discussed above are also not taught, suggested or disclosed by either Pack-Harris or Lilly. Thus, the combination of those references cannot teach, suggest or disclose the applicant's invention defined in claims 15 and 19-20.

Lilly is cited for providing a step missing from the teachings of Pack-Harris directed to incorporating security measures to prevent unauthorized access to the transaction record, dispensing data, encrypting usage data and actual consumption data. The Examiner concludes that one of ordinary skill in the art would have been motivated to incorporate encrypting pharmacy information, as taught by Lilly, to the method taught by Pack-Harris.

Lilly does not teach, suggest or disclose, however, the missing features of amended claim 9, described above. In particular, Lilly does not teach or suggest "obtaining a plurality transaction records from at least one pharmacy" and "correlating the transaction records to [a related] prescription." Furthermore, Lilly does not teach, suggest or disclose "computing actual consumption data from the dispensing data and usage data," wherein the "actual consumption data" comprises "a plurality of sources for the medications" and "portions of the actual consumption of the medication that are respectively attributable to the plurality of sources."

Instead, Lilly is directed to tracking a prescriptive medication history, including for a plurality of physicians, pharmacies and hospitals for patients over time. Lilly further regards deploying pharmaceutical information in a "secure, redundant hosted environment" (see paragraph 74). Lilly does not regard computing "actual consumption data" including "a plurality of sources" for medications and "portions of the actual consumption of the medication that are attributable to [a plurality of] respective sources."

Thus, even if one were to combine Lilly with Pack-Harris, as the Examiner has done, applicant's claims 15 and 19-20, which include additional features that are combined with the features defined in claim 9 still would not be taught. Therefore, applicant submits that claims 15 and 19-20 are allowable over the combination of Pack-Harris and Lilly, and are not obvious under 35 U.S.C. §103(a).

Conclusion

Fort the reasons set forth above, the Examiner is respectfully requested to reconsider the application, allow the claims as amended and pass this case to issue.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on April 2, 2009:

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